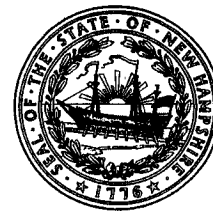




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 4, 2006

Steven P. Sicard
PO Box 312
Hampton Falls, NH 03844

**NOTICE OF DECISION
ON PROPOSED LICENSE ACTION
DOCKET NO. NPLA 05-004**

Dear Mr. Sicard:

By Notice of Proposed License Action No. 05-004 issued November 14, 2005, the New Hampshire Department of Environmental Services Water Division ("the Division") sought revocation of Septic System Installers Permit # 2354, held by Steven P. Sicard, for violations of RSA 485-A:36, RSA 485-A:29, I, and Env-Ws 1006-01(a).

A hearing on this matter was held on March 29, 2006. The hearing was attended by the following persons on behalf of the Division: Attorney Kerry Barnsley, Mr. Richard de Seve, and Mr. Jay Baas. You did not attend the hearing nor did you have a representative attend the hearing.

Based on my review of the evidence presented at the hearing held on this matter, I have concluded that just cause exists for the Department of Environmental Services to revoke or refuse to renew your Septic System Installers Permit.

This decision is based on the following findings of fact, which are supported by the testimony of Division witnesses Richard de Seve and Jay Baas, and Exhibits 1a through 5:

FINDINGS OF FACT

1. Steven P. Sicard is an individual having a mailing address of Post Office Box 312, Hampton Falls, NH 03844.
2. DES issued septic system installer's permit number #2354 dated June 19, 1987 ("the Permit") to Steven P. Sicard, to permit Mr. Sicard to install state-approved individual septic systems on property located in the state of New Hampshire. Exhibit 2c. The Permit has been renewed annually thereafter through 2005. Mr. Sicard did not apply to renew the Permit in 2006, and he does not currently hold a Septic System Installers Permit from DES.
3. On August 22, 2003, DES issued construction approval CA2003055629 to allow for installation of a new septic system on property located at 12 Pine Road, North Hampton, New Hampshire, ("the Property") to replace an existing system. Exhibits 3a and 3b.
4. The Property is owned by June Labbe, of 1002 Richard Drive, The Villages, Florida.

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

DES Web site: www.des.nh.gov

5. The septic system design, approved by DES for the Property, was submitted by Peter Landry, licensed designer #984. Exhibit 3c.
6. On November 8, 2004, Steven Sicard installed the approved septic system on the Property.
7. The Division has no record of Mr. Sicard requesting inspection of the installation of the septic system on the Property by an authorized agent of DES.
8. Mr. Sicard prepared a Repair/Replacement questionnaire for the new system installed on the Property. Exhibit 4b. He gave a copy of a completed questionnaire to the owner of the Property, June Labbe. Mr. Sicard never filed any paperwork concerning the septic system installation with the Division, directly.
9. On the repair/replacement questionnaire, received from the Property owner by the Division on August 12, 2005, Mr. Sicard states that he installed the newly approved system. Exhibit 4c
10. Typically, the licensed septic designer will stamp the repair/replacement questionnaire to show that he/she in fact dug the test pits.
11. It appears from the repair/replacement questionnaire, that Mr. Sicard placed a copy of the inked stamp of a licensed septic designer on the questionnaire. It appears from the document that Mr. Sicard erased the name of the licensed designer and wrote in the name of the Division's regional inspector for the North Hampton area. Exhibit 4c.
12. The Division's regional inspector, Jay Baas, is an inactive licensed designer, and does not stamp plans as a licensed designer.
13. Jay Baas did not stamp the repair/replacement questionnaire provided to the Property owner, dated November 8, 2004; nor was he or anyone from the Division called to inspect the system installed on the Property at any time.
14. A Notice of Proposed License Action setting out the allegations and violations was sent to Steven Sicard on November 14, 2005. According to the certified mail receipt in the file he signed for and received the Notice on November 15, 2005.
15. Mr. Sicard did not file an appearance with the department within 30 days of the Notice, and has not filed an appearance or made any other response to date.
16. On January 30, 2006 the Division requested a final hearing in this matter.

17. On February 17, 2006, a notice that a hearing on this matter was scheduled for Monday, March 27, 2006, at 2:0pm [sic] in Room 110 of the DES offices at 29 Hazen Drive in Concord, New Hampshire, was sent to Mr. Sicard at P.O. Box 312, Hampton Falls, NH 03844 by certified mail.
18. The hearing notice was returned unclaimed.
19. Mr. Sicard receives mail at P.O. Box 312, Hampton Falls, NH 03844.
20. Mr. Sicard received the original Notice of License Action at P.O. Box 312, Hampton Falls, NH 03844.
21. On March 20, 2006 undersigned counsel sent a copy of hearing notice, with the corrected time, to Steven Sicard at P.O. Box 312, Hampton Falls, NH 03844 and at 46 Drinkwater Road, Hampton Falls, NH 03844, along with a copy of the letter including the witness and exhibits list. No regular mail sent by undersigned counsel to these addresses has been returned by the post office. Exhibits 1b and 1c.

Based on these findings of fact and the applicable statutes and administrative rules, the Department makes the following conclusions of law:

Conclusions of Law

1. RSA 485-A:29-44 authorizes DES to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems"). Pursuant to rulemaking authority conferred therein, the Commissioner of DES has adopted Env-Ws 1000 to implement this program.
2. RSA 485-A:29, I and Env-Ws 1004.06(a) require that individual septic systems be installed in strict accordance with approved plans, and are not to be covered or placed in operation without final inspection and approval by an authorized agent of DES.
3. Env-Ws 1003.10(h) through (l) governs the replacement and repair of existing septic systems. Env-Ws 1003.10(j) requires submission of a repair/replacement questionnaire upon the in-kind replacement of a residential septic system.
4. Env-Ws 1003.10(i) requires that test pits be performed by a licensed septic designer, and that the test pit results be included in the questionnaire.
5. RSA 485-A:36 provides that "No person shall engage in the business of installing subsurface sewage or waste disposal systems ... without first obtaining an installer's permit from the department." An "installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal

systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14.”

6. Steven P. Sicard violated RSA 485-A:29, I and Env-Ws 1006.04(a) by failing to contact DES for an inspection of an approved septic system prior to covering the system.
7. Stephen P. Sicard fraudulently altered the septic designer's seal on Exhibits 4b and 4c, the Repair/Replacement Questionnaire and the Inspection Compliance Report submitted to the Division in November 2004.
8. Mr. Sicard's violations of the statute and rules governing the installation of septic systems and his fraudulent alteration of forms submitted to DES separately and together constitute just cause to suspend, revoke or refuse to renew Mr. Sicard's license as a septic system installer.

Based on these findings of fact and conclusions of law, the Department of Environmental Services hereby decides and informs Stephen P. Sicard that it will refuse to renew or re-issue his septic installers license for a period of 5 years.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

COMMISSIONER OF ENVIRONMENT SERVICES

By:  **COPY**
Michael J. Walls, Presiding Officer

cc: Michael P. Nolin, Commissioner
Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, DES Legal Unit
Richard de Seve, DES WD
Public Information Officer, DES PIP

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99